

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSEPH MURPHY, WILLIAM M. SEXTON,
DENNIS A. KLEJNA, GERALD SHERER, PHILIP
SILVERMAN, RICHARD N. OUTRIDGE, TONE
GRANT, LEO R. BREITMAN, NATHAN GANTCHER,
DAVID V. HARKINS, SCOTT L. JAECKEL, THOMAS
H. LEE, RONALD L. O'KELLEY, and SCOTT A.
SCHOEN,

Plaintiffs,

v.

ALLIED WORLD ASSURANCE COMPANY
(U.S.), INC. and ARCH INSURANCE COMPANY,

Defendants
-----X

Case No. 08-CV-4196 (GEL)

Electronically Filed

**TONE GRANT'S MEMORANDUM OF LAW IN OPPOSITION TO ALLIED WORLD
ASSURANCE COMPANY (U.S.), INC.'s MOTION FOR SUMMARY JUDGMENT**

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Attorneys for Plaintiff Tone Grant

Defendant Tone Grant, by and through undersigned counsel, respectfully submits this memorandum of law in opposition to the motion for summary judgment of Allied World Assurance Company (U.S.), Inc. (“AWAC”) pursuant to Rule 56 of the Federal Rules of Civil Procedure, in *Murphy, et al., v. Allied World Assurance Co., et al.*, No. 08-CV-4196 (S.D.N.Y.).

Mr. Grant hereby adopts and incorporates by reference the arguments set forth in the opposition brief submitted today by Dennis A. Klejna, William M. Sexton, Gerald Sherer, Joseph Murphy, Richard N. Outridge, Philip Silverman, Leo R. Breitman, Nathan Gantcher, David V. Harkins, Scott L. Jaeckel, Thomas H. Lee, Ronald L. O’Kelley, Scott A. Schoen, John D. Agoglia and Peter McCarthy (the “Joint Brief Insureds”).

In its motion for summary judgment, AWAC claims that the Prior Knowledge Exclusion (“PKE”) in the AWAC Policy bars coverage for all insureds. As demonstrated in the Joint Brief Insureds’ opposition memorandum, AWAC is not entitled to summary judgment because material questions of fact exist as to whether it may rely on the PKE. *See* Joint Brief Insureds’ Memorandum of Law in Opposition to AWAC’s Motion for Summary Judgment, § I. The PKE was not included in AWAC’s August 10, 2005 policy binder, but appeared in the AWAC Policy when it issued on March 16, 2006. Disputed issues of fact exist over whether the parties had agreed upon the terms of the PKE at the time the policy was bound, making summary judgment inappropriate. Disputed issues of material fact also exist over whether the “full severability” endorsement in the primary policy precludes AWAC from invoking the knowledge of one insured to deny coverage for all insureds. *See id.*, § II. Finally, even if the full severability endorsement did not apply, AWAC has not met its burden to prove that all of the claims asserted in the underlying actions for which it denies coverage arise out of Phillip Bennett’s knowledge. *See id.*, § III.

Accordingly, and as set forth in greater detail in the Joint Brief Insureds' memorandum, AWAC's motion for summary judgment should be denied.

Dated: August 8, 2008
New York, New York

Respectfully submitted,

s/ Norman L. Eisen

Norman L. Eisen (admitted *pro hac vice*)
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